

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2007

CORAM:

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

W.P.Nos.1482 AND 1869 OF 2007

And

M.P.Nos. 2, 3, 1 and 4 of 2007

Shri Andal Alagar Kalyana Mandapam
Private Limited, Rep., by its
Managing Director Mrs.V.Prremalatha,
No.54-A, Kannammal Street,
Kannabiran Colony,
Chennai-600 093.

... Petitioner in WP 1482/2007

1.Mrs.V.Prremalatha
2.A.Vijayakant
3.Mrs.K.Amsaveni
4.Mrs.R.Radha
5.Mr.L.K.Sudhish
6.Mrs.Devaki Nagarajan

... Petitioners in WP 1869/2007

vs.

1.The Union of India rep., by its Secretary,
Ministry of Shipping, Road Transport
and Highways, Department of Road
Transport and Highways, New Delhi.

2.The Competent Authority and
Special District Revenue Officer (L.A.),
National Highway Schemes,
Kancheepuram and Tiruvallur Districts,
R.D.O. Office, Kancheepuram.

3.The Project Director,
National Highways Authority of India,
SPIC House, No.88, Anna Salai,
Guindy, Chennai-600 032.

4.Hon'ble Minister Mr.T.R.Balu,
Ministry of Shipping,
Road Transport and Highways,
Department of Road Transport and
Highways, New Delhi.

5.The Central Public Information Officer,
National Highways Authority of India,
Central Information Commission,
Old JNU Campus, Block-IV,
5th Floor, New Delhi-110 067.

.. Respondents in both WPs

WP No.1482/2007:

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records of the first respondent relating to the impugned Notification in S.O.No.1622(E), dated 18.11.2005 of the first respondent and the records relating to the consequential award passed by the second respondent in Rc.No.466/2005/NH dated 8.12.2006 in respect of the petitioner's Kalayana Mandapam situated on the lands comprised in T.S.Nos.14/1, 14/2, 14/3 and 15/2 in Block No.43 to an Plot area of 3642 square metres at No.106, Koyambedu Village, Egmore-Nungambakkam Taluk, Chennai District as referred in the impugned award and quash the said impugned Notification in S.O.No.1622 (E) dated 18.11.2005 and the consequential award in Rc.No.466/2005/NH dated 8.12.2006 and consequently to forbear the official respondents from acquiring the portion of lands wherein the superstructures are put up in Survey Nos.14/1, 14/2, 14/3 and 15/2 in Block No.43 in Koyambedu Village, Chennai District.

WP No.1869/2007:

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records of the first respondent relating to the impugned Notification in S.O.No.1622(E), dated 18.11.2005 of the first respondent and the records relating to the consequential award passed by the second respondent in Rc.No.466/2005/NH dated 8.12.2006 in respect of the petitioner's land and building comprised in T.S.Nos.14/1, 14/2, 14/3 and 15/2 in Block No.43 to an extent of 2164.5 square metres at No.106, Koyambedu Village, Egmore-Nungambakkam Taluk, Chennai District as referred in the impugned award and quash the said impugned Notification in S.O.No.1622 (E) dated 18.11.2005 and the consequential award in Rc.No.466/2005/NH dated 8.12.2006 and consequently to forbear the official respondents from acquiring the portion of lands wherein the superstructures are put up in Survey Nos.14/1, 14/2, 14/3 and 15/2 in Block No.43 in Koyambedu Village, Chennai District.

For petitioners in both WPs : Dr.Rajeev Dhavan,
Senior Counsel for
Mr.S.Manimaran.

For Respondents-1&2 : Mr.V.T.Gopalan,
in WP 1482/2007 and Addl. Solicitor General
for Respondents 1to 3
in WP 1869/2007

For Respondents-3&4 : Mr.P.Wilson,
in WP 1482/2007 and Asst. Solicitor General
for Respondent-4 in
WP 1869/2007

COMMON ORDER

Under the National Highways Development Project Phase-I, known as "Golden Quadrilateral", the Government of India proposed three Grade Separators, along National Highways 4, 45 and 205 in the City of Chennai, in three major arterial junctions, viz., Kathipara (Guindy), Koyambedu and Padi, apart from a flyover in front of Chennai Air Port.

2. By a notification of the Government of India, Ministry of Shipping, Road Transport and Highways (Department of Road Transport and Highways) bearing No.S.O.1130(E) dated 12.8.2005, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub Section (ii) dated 12.8.2005, issued under Section 3-A (1) of the National Highways Act, 1956, (hereinafter referred to as the 'Act') the proposal to acquire several lands in Koyambedu Village, Egmore-Nungambakkam Taluk, Chennai District was notified as being required for the public purpose of construction of free flow facilities along National Highway No.4. The substance of the said notification was published in one English Daily and one Vernacular Daily on 20.8.2005 and after considering the objections raised by some of the land owners, with reference to the remarks of the National Highways Authority of India, a declaration under Section 3-D (1) of the Act was issued by way of a notification in S.O.1622(E) dated 18.11.2005. The said declaration was also published in the Newspapers on 15.12.2005 and an award was passed on 8-12-2006.

3. The lands in New Survey Nos.14/1, 14/2, 14/3 and 15/2, measuring 1582 sq.mtrs., 286 sq.mtrs., 165 sq.mtrs., and 1083.5 sq.mtrs., respectively, of Koyambedu Village, Egmore-Nungambakkam Taluk, owned by six members of a family, formed part of the said acquisition. These six members of the family have joined together and filed a writ petition in W.P.No.1869 of 2007, challenging the declaration issued under Section 3-D (1) as well as the Award passed on 8.12.2006.

4. Two out of the six land owners, are the Managing Director and Director of a Private Limited Company by name Shri Andal Alagar Kalyana Mandapam Pvt. Ltd., which owns a Kalyana Mandapam constructed on the aforesaid lands. Therefore, as the owner of the superstructure, the said Private Limited Company has also filed a writ petition in W.P.No.1482 of 2007, challenging the declaration dated 18.11.2005 issued under Section 3-D(1) as well as the Award passed on 8.12.2006.

5. I have heard Dr.Rajeev Dhavan, learned Senior Counsel appearing for the petitioners in both the writ petitions, Mr.V.T.Gopalan, learned Additional Solicitor General and Mr.P.Wilson, learned Asst. Solicitor General for Official respondents in both the writ petitions.

6. Before getting into the rival submissions, it is necessary to set out the list of dates and events, on which there is no controversy. They are as follows:-

12.08.2005	Notification under section 3-A issued in Government Gazette
20.08.2005	Paper Publication of the substance of Notification made
12.09.2005	Competent Authority writes to Project Director seeking for remarks on objections by land owners
14.09.2005	Remarks sent by NHAI to Competent Authority
29.09.2005	Proceedings of DRO u/s 3(C) (2) of NH Act
18.11.2005	Notification under Section 3-D(1) issued in Gazette
20.12.2005	Publication in News Papers of the declaration under Section 3-D(1)
05.01.2006	One of the writ petitioners write to the Competent Authority claiming that no notice was issued and no sketch was furnished and that therefore she was not aware of the portion of the land sought to be acquired. By the said letter, the writ petitioner seeks information regarding the portion of the land sought to be acquired, along with a field map or sketch. She also encloses copies of documents of title.
31.01.2006	Legal notice issued by the Counsel for the writ petitioner reiterating her claim that no notice was issued and no sketch was furnished and that therefore she was not aware of the portion of the land sought to be acquired. Hence, the counsel also seeks the field map and sketch.
19.02.2006	An interview allegedly given by the fourth respondent (Minister) to the Press, is published in a Tamil Daily Newspaper. As per the Newspaper report, the fourth respondent indicated that the Central Government was prepared to reconsider if an alternative proposal is submitted by the petitioners.

03.03.2006 Representation submitted by one of the writ petitioners along with an alternative Plan and a Technical Opinion from a retired Chief Urban Planner of the Chennai Metropolitan Development Authority.

01.11.2006 Alternative proposal of the writ petitioner rejected by the Government of India

20.11.2006 Request made by the writ petitioner for reconsideration of the matter

08.12.2006 Award passed by the Competent Authority

11.12.2006 Letter of the Competent Authority to collect the award amount

28.12.2006 Notice issued to Writ Petitioner u/s 3-E(1) of the Act by the Competent Authority

03.01.2007 Petition for reconsideration also rejected

05.01.2007 Writ petitions filed

7. In the background of the events short listed above, Dr.Rajeev Dhavan, learned Senior Counsel for the petitioners contended that the whole sequence of events, could be dissected into two parts, viz., (i) the events commencing from the notification under Section 3-A(1) (dated 12.8.2005) and culminating in a declaration under Section 3-D(1) (dated 20.12.2005); and (ii) the events starting from the request of the petitioner for details, by her letter dated 5.1.2006 and her proposal dated 3-3-2006 for an alternative Plan, culminating in the rejection of the alternative proposal on 1.11.2006 and the Award passed on 8.12.2006.

8. In so far as the first part of the sequence of events is concerned, Dr.Rajeev Dhavan, learned Senior Counsel contended that the notification under Section 3-A(1) as well as the declaration under Section 3-D(1) are vitiated for two reasons, viz.,:-

(a) that the names of the owners of these lands were wrongly mentioned in respect of Survey Nos.14/1 and 15/2, though they were correctly mentioned in respect of Survey Nos.14/2 and 14/3; and

(b) that the precise details of the lands sought to be acquired, with reference to the sketch/field map and their portion as part of the whole, were not mentioned in the

notification, reducing the opportunity of submitting objections into an empty formality and a mockery.

9. In so far as the second part of the sequence of events is concerned, the learned Senior Counsel for the petitioners contended -

(a) that there was a promissory estoppel on the part of the respondents in respect of the alternative proposal submitted by the petitioners;

(b) that the petitioners developed a legitimate expectation, in view of the promises made by the fourth respondent that their Kalyana Mandapam could be retained in tact;

(c) that the invitation for an alternative proposal before the ensuing Elections and the rejection of the alternative proposal after the Elections, exposed the mala fide intentions on the part of the fourth respondent; and

(d) that even while exercising their powers as administrative authorities, the respondents are duty bound to adopt the least invasive or least restrictive choice of measures, so that there is "proportionality" and "reasonableness" in the administrative action.

10. Per contra, Mr.V.T.Gopalan, learned Additional Solicitor General contended -

(a) that the challenge to the acquisition proceedings, having been made after the property vested with the Central Government under Section 3-D (2) and after the Award was passed under Section 3-G, was not maintainable;

(b) that the proposal for an alternative Plan itself, having emanated after the declaration under Section 3-D(1) and after the property having vested with the Central Government under Section 3-D(2), could not have been considered in the teeth of the provisions of the Act;

(c) that the question of mala fides did not arise in as much as the very proposal for acquisition was mooted way back in the year 2004 with the preparation of a Detailed Project Report, survey of the lands, floating of tenders etc., while one of the petitioners admittedly started a Political Party only in September, 2005 and that therefore no one could have envisaged the future course of events at that stage;

(d) that there was no promise and that there could not have been a promise against statutory provisions and hence the question of promissory estoppel did not arise; and

(e) that the course of events showed that there was no scope for legitimate expectation.

Now let us consider the rival submissions one after another.

I. CHALLENGE TO THE ACQUISITION ON THE GROUND OF VAGUENESS AND LACK OF PARTICULARS:

11. Assailing the acquisition proceedings on the ground of vagueness and lack of particulars, Dr. Rajeev Dhavan, learned Senior Counsel for the petitioners, drew my attention to the notification under Section 3-A(1) and pointed out that the notification did not mention the names of the owners of any of the lands sought to be acquired. In Column No.2 of the Schedule to the notification, the Survey Numbers are mentioned with or without the word "Part", Column No.3 mentioned the type of land as "Private or Government", Column No.4 mentioned the nature of land as "Ryotwari Manai" or "Village Natham" and Column No.5 mentioned the extent in square metres. There were no details in the notification regarding the portion of the land sought to be acquired, wherever only a part of the land was sought to be acquired. Therefore, the land owners, even if they had any notice regarding the acquisition, did not have any information regarding the portion of the land sought to be acquired.

12. Section 3-A(2) of the National Highways Act, 1956, hereinafter referred to as the 'Act', made it mandatory for every notification to contain a brief description of the land. The Section reads as follows:-

"3-A. POWER TO ACQUIRE LAND ETC.--

(1)

(2) Every notification under Sub

Section (1) shall give a brief description of the land."

13. In order to drive home the aforesaid contention, the learned Senior Counsel for the petitioners, relied upon the decisions of the Supreme Court in *Munshi Singh and Others vs. Union of India* ((1973) 2 SCC 337), *State of Orissa vs. Sridhar Kumar Mallik and Others* ((1985) 3 SCC 697), *Om Prakash Sharma and Others vs. M.P. Audyogik Kendra Vikas Nigam and Others* ((2005) 10 SCC 306) and *Competent Authority vs. Barangore Jute Factory and Others* ((2005) 13 SCC 477)).

14. In *Munshi Singh* case, the Supreme Court found on facts that the notification under Section 4(1) was vitiated by vagueness and indefiniteness of the public purpose for which the land was sought to be acquired. Therefore, the Supreme Court held in para-9 that if the opportunity to file objections and participate in

the enquiry under Section 5-A has any purpose and if it has to be given its full effect, the notification under Section 4(1) must give some definite indication or particulars of the purpose. But while holding so, the Supreme Court also gave reasons for such a conclusion in the following words, in para-9:-

"In the absence of such specific or particular purpose being stated the objector cannot file any proper or cogent objections under Section 5-A which he has a right to do under that provision. We would accordingly hold that owing to the vagueness and indefiniteness of the public purpose stated in the notifications under Section 4(1) and in the absence of any proof that the appellants were either aware of or were shown the scheme or the Master Plan in respect of the planned development of the area in question the appellants were wholly unable to object effectively and exercise their right under Section 5-A of the Acquisition Act."

Thus, the Supreme Court was convinced on facts in the said case that the appellants therein were neither aware of nor shown the scheme or Master Plan in respect of planned development of the area in question.

15. In *State of Orissa vs. Sridhar Kumar Mallik* (1985 (3) SCC 697), the Supreme Court was concerned with a proclamation issued under Section 417-A (1-a) of the Orissa Municipal Act, 1950. The proclamation was intended to extend the Orissa Municipality Act, 1950, to an area other than a Municipality, leading to certain consequences such as the imposition of different kinds of taxes. Therefore, the law laid down therein that the proclamation must be precise and clear and must indicate with sufficient accuracy, the area intended to be notified, cannot be imported to a case of land acquisition.

16. In *Om Prakash Sharma* case (2005 (10) SCC 306), the notification under Section 4(1) of the Land Acquisition Act, 1894, was held to be invalid, on account of the fact that neither the survey numbers nor the names of the land owners were furnished in the notification. But in the present case, the survey numbers as well as the extent are mentioned and hence it cannot be compared with *Om Prakash Sharma* case.

17. Heavy reliance was placed by the learned Senior Counsel for the petitioners, on the judgment in *Competent Authority vs. Barangore Jute Factory* (2005 (13) SCC 477). The facts of the said case come almost closer to the facts of the case on hand. That was also a case under the National Highways Act, 1956. As in the present case, the notification under Section 3-A(1) contained the details of the survey numbers, extent of land, classification of land etc. But many of the lands sought to be acquired in that case were only part of the whole land in certain survey numbers. Therefore, a contention was raised that when only a part of a

larger tract or larger chunk of land was sought to be acquired, the land owners will not be in a position to know which part was acquired and they would not be in a position to object to the acquisition effectively. Considering the scope of the requirement under Section 3-A(2) to give a brief description of land, the Supreme Court held in para-5 of the said judgment as follows:-

"So far as the question whether the impugned notification meets the requirement of Section 3-A(1) of the Act regarding giving brief description of land is concerned, we have already shown that even though plot numbers of lands in respect of each mouza are given, different pieces of land are acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was being acquired. Unless it is known as to which portion was to be acquired, the petitioners would be unable to understand the impact of acquisition or to raise any objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned notification in this case is, therefore, not in accordance with the law."

18. Even in the present case, the notification under Section 3-A (1) shows that in respect of a few survey numbers, the entire land in the survey number is sought to be acquired and in respect of a few survey numbers, only a part of the land is sought to be acquired. The details of the portion of the land to be acquired and the portion of the land left out, are not indicated in the notification and hence the ratio laid down in the aforesaid decision of the Supreme Court appears, on a cursory glance, to be squarely applicable to the case on hand. But it is not so.

19. After laying down the law in para-5 (as extracted above), the Supreme Court, qualified the same with a rider in paras-6 and 7 as follows:-

"6. While dealing with the question of brief description of land in the acquisition notifications, reference was made to some judgments of this Court where acquisition notifications under Section 4 of the Land Acquisition Act had come up for consideration

on account of challenge being levelled on the ground of vagueness of the notifications. In most of these cases, plan of the area under acquisition was made part of the notifications to show that the requirement of description of land was met. This leads us to inquire whether there was any site plan forming part of the impugned notification.

7. The availability of a plan would have made all the difference. If there is a plan, the area under acquisition becomes identifiable immediately. The question whether the impugned notification meets the requirement of brief description of land under Section 3-A (2) goes to the root of the matter. The High Court rightly observed: "... It is just not possible to proceed to determine the necessity of acquisition of a particular plot of land without preparation of a proper plan." The appendix to the impugned notification shows that in many cases small parts of larger chunks of land have been notified for acquisition. This is not possible without preparing a plan. But where is the plan? The notification in question makes no reference to any plan. Our attention was drawn to averments in pleadings by the writ petitioners and replies thereto of the acquiring authority. The writ petitioners have pleaded that there was no plan. Replies are vague and by way of rolled-up answers. There is no specific reply. It is obvious that there was no plan and, therefore, none was referred to in the pleadings nor anything was produced before the Court at the hearing. Learned counsel for the competent authority tried to submit before us that there was a plan at the time of issue of the notification and the writ petitioners ought to have inspected it, if they so desired. He further submitted that the plan was produced before the High Court. We find that both these submissions are not sustainable as they are not correct. A reference to the impugned notification shows that there is no mention of any plan. Without this how can anybody know that there was a plan which could be inspected and inspected where? We are inclined to accept that there was no plan accompanying the impugned notification. During the course of hearing we were shown a plan which we are unable to link with the impugned notification. This was a 1996 PWD plan. PWD is a department of the State Government. The impugned notification is by the Central Government. NHA is established under a Central Act. The competent authority under

Section 3 of the Act is appointed by the Central Government. Therefore, this State Government plan of 1996 (the impugned notification is of 1998) is of no assistance. The impugned judgment of the High Court emphasises the need for a plan. It is clear from the judgment of the High Court that no plan was produced before it. The absence of any reference to a plan in the impugned notification and in fact non-availability of any plan linked to the notification, fortifies the argument that the description of the land under acquisition in the impugned notification fails to meet the legal requirement of a brief description of the land which renders the notification invalid."

20. Thus, the acquiring authority failed at two levels in the said case before the Supreme Court, viz., (i) by failure to append a plan to the notification and (ii) by failure to produce a plan even at the time of hearing, so as to link the same with the notification. But in the present case, the notification published in the Gazette of India under Section 3-A (1) of the Act, contained the following information, as part of the notification itself, immediately before the schedule:-

"The land plans and other details of the land covered under this notification are available and can be inspected by the interested persons at the Office of the Competent Authority."

21. The notification dated 12.8.2005 gave a time limit of 21 days for any person interested in the lands to raise objections under Section 3-C (1) of the Act and admittedly, the petitioners failed to avail the said opportunity. The petitioners did not avail either the opportunity to file objections in response to the notification dated 12.8.2005 or the opportunity to inspect the land plans and other details at the Office of the Competent Authority, despite an offer being made in the notification itself. Therefore, on facts, I find that the law laid down by the Supreme Court in Competent Authority vs. Barangore Jute Factory (2005 (13) SCC 477), is not applicable to the case on hand. A similar view is taken by the Division Bench of this Court in The General Manager (Tech.) and Project Director, National Highways Authority of India vs. Mrs.Sridevi and Others (2006 (5) CTC 634), whereby the Division Bench distinguished the aforesaid decision of the Supreme Court with reference to the specific statement made in the notification itself to the effect that the land plans and other details can be inspected by any person interested at the Office of the Competent Authority.

22. In any event, the petitioners may not be entitled to raise the issue of vagueness in notification, since the sequence of events show that the petitioners have understood what portions of the land are sought to be acquired. As observed by the Supreme

Court in para-8 of the aforesaid decision, the absence of a plan renders the right to file objections, nugatory. As a necessary corollary, clarity in the notification was always insisted, only for the purpose of making the opportunity to file objections meaningful. In this case, after having sent a letter dated 5.1.2006, followed by a legal notice dated 31.1.2006, feigning ignorance of the details, the petitioners were able to submit an alternative proposal on 3.3.2006, with an expert opinion from a retired Chief Urban Planner of the Chennai Metropolitan Development Authority. Thus, the petitioners appear to have understood precisely, what portion of the land was going to be acquired and what portion was going to be left out. Without such an understanding, the petitioners could not have submitted an alternative proposal with an expert opinion. Therefore, the absence of precise details in the notification, had not prejudiced the rights of the petitioners.

23. It is also pertinent to note that the petitioners have not chosen to challenge the notification under Section 3-A(1) dated 12.8.2005, but chosen to challenge only the declaration under Section 3-D(1) dated 18.11.2005 and the Award passed on 8.12.2006. As a matter of fact, the petitioners have stated in para-10 of the affidavit in support of W.P.No.1482 of 2007 that they have no objection for the acquisition of their vacant portion of land. After having said so, it is not open to the petitioners to contend that the notification under Section 3-A(1) is vitiated on account of vagueness.

24. As rightly contended by the learned Additional Solicitor General, the notification under Section 3-A(1) was issued on 12.8.2005, the declaration under Section 3-D(1) was issued on 18.11.2005 and the substance of the declaration under Section 3-D(1) was published in the Newspapers on 20.12.2005. Consequently, the property vested with the Central Government by virtue of Section 3-D(2) and the Award itself was passed on 8.12.2006. The petitioners chose to come to Court only in January 2007, after allowing the Award to be passed. The Supreme Court, in *Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd and Others* ((1996) 11 SCC 501)), traced the history of law relating to the maintainability of a challenge to the acquisition proceedings, after the Award is passed, from paragraph-23 onwards and held in para-29 that the Court should be loath to quash the notifications, when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final.

25. In *Municipal Council, Ahmed Nagar vs. Shah Hyder Beig*, 2000 (2) SCC 48, the Supreme Court held in para-17 as follows:-

"17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases."

26. Though the aforesaid view that no writ petition can be entertained after the Award is passed, appears to have been explained in the latest decision relied upon by the learned Senior Counsel for the petitioners in Competent Authority vs. Barangore Jute Factory (2005 (13) SCC 477), the same need not detain us for long in view of the fact that the said decision is not applicable to the facts of the present case, for the reasons stated in paragraphs-20 and 21 above.

II. PROMISSORY ESTOPPEL:

27. Coming to the second part of the sequence of events, commencing from the Newspaper report dated 19.2.2006, the learned Senior Counsel for the petitioners contended that the very invitation for an alternative proposal from the Minister concerned (the 4th respondent herein), amounted to promissory estoppel. Drawing my attention to the judgment of the Supreme Court in Union of India vs. Godfrey Philips India Ltd (AIR 1986 SC 806), the learned Senior Counsel contended that the doctrine of promissory estoppel is well established in the Administrative Law of India. It represents a principle evolved by equity to avoid injustice. In para-9 of the said judgment, the Supreme Court explained the doctrine in the following words:-

"The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties."

28. The learned Senior Counsel relied upon the decision in Delhi Cloth and General Mills Ltd vs. Union of India (1988 (1) SCC 86), to drive home the point that it is not necessary to prove any damage, detriment or prejudice to the party asserting the estoppel. The Supreme Court held in the said case in para-24 as follows:-

"24. The concept of detriment as we now understand it is whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to resile from his assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation."

29. The doctrine of promissory estoppel, according to the learned Senior Counsel for the petitioners, took a leap forward, in the decision of the Supreme Court in State of Punjab vs. Nestle India Limited (2004 (6) SCC 465), where the Supreme Court held that the principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. In para-29 of the said judgment, the Supreme Court made it clear that the Government was equally susceptible to the operation of the doctrine, in whatever area or field the promise is made - contractual, administrative or statutory.

30. There is no doubt about the applicability of the doctrine even to administrative or statutory functions of the Government. But there are well known pre-conditions for the applicability and the operation of the doctrine, which are spelt-out in para-28 of the judgment in Nestle India case. They are as follows:-

- "(1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee;
- (2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise."

31. Applying the above two pre-conditions, I do not find in this case that there was either a clear and unequivocal promise by the respondents including the 4th respondent or such an acting on the part of the petitioners as would make it inequitable to allow the respondents to go back on the same. Even if we go by the Newspaper report dated 19.2.2006, the statement that is attributed to the fourth respondent is that the Central Government was prepared to reconsider the matter, if any alternative proposal, which would not affect the other land owners, was submitted. Even if such a statement is taken to be a promise, by stretching it a little in favour of the petitioners, I do not find that the petitioners have acted on the promise in such a manner or altered their position to such an extent, as would make it inequitable to permit the respondents to go back on the same. All that the petitioners have done in response to the said statement, is to submit an alternative proposal. The position of the petitioners did not get altered on account of the promise and their acting on the promise and they did not become worse off on account of the said statement and the submission of an alternative proposal. There is no averment in the affidavits in support of the writ petitions that the petitioners altered their position, on account of the statement made by the fourth respondent, as reported in the Press on 19.2.2006. Therefore, I am of the considered view that there was neither a promise nor an estoppel in this case.

III. LEGITIMATE EXPECTATION:-

32. Dr.Rajeev Dhavan, learned Senior Counsel for the petitioners contended that the promise made by the fourth respondent in his Press interview as reported in the Newspaper on 19.2.2006, inviting alternative proposal, gave rise to a legitimate expectation on the part of the petitioners, even if the same is not taken to have conferred a legal right upon the petitioners. Therefore, it is the contention of the learned Senior Counsel that the respondents were obliged to give a due consideration to the alternative proposal made by the petitioners and that the respondents were duty bound "to treat the citizen with fullest personal consideration".

33. In Madras City Wine Merchants' Association and Another vs. State of Tamil Nadu (1994 (5) SCC 509), the Supreme Court considered the doctrine of legitimate expectation at length, from paragraph-43 onwards upto paragraph-48. In para-45 of the said judgment, the Supreme Court extracted the meaning of the term "Legitimate Expectation", as it appears in Halsbury's Laws of England as follows:-

"A person may have a legitimate expectation of being treated in a certain way by an Administrative Authority even though he has no legal right in Private Law to receive such treatment".

34. After pointing out that such expectation may arise either from a representation or promise made by the authority, the Supreme Court pointed out in the said decision that though there is an analogy between the doctrines of legitimate expectation and of estoppel, the two are distinct in that detrimental reliance upon the representation/promise was not a necessary ingredient of a legitimate expectation.

35. It is no doubt true that the requirement of "due consideration" of a legitimate expectation forms part of the principle of non-arbitrariness, which is a necessary concomitant of the Rule of Law and the Government Departments are expected to treat the citizen with fullest personal consideration. But as held by the Supreme Court in Union of India vs. Hindustan Development Corporation and Others (1993 (3) SCC 499), which is also quoted with approval in Madras City Wine Merchants' Association case:

"if a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 but a claim based on a mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is

violative of these principles warranting interference."

36. The scope and ambit of the doctrine was again lucidly spelt out in para-35 of the judgment of the Supreme Court in Union of India vs. Hindustan Development Corporation (1993 (3) SCC 499), in the following words:-

"It follows that the concept of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits, particularly when the element of speculation and uncertainty is inherent in that very concept."

37. In the light of the principles underlying the doctrine of legitimate expectation as culled out from the decisions of the Supreme Court, it is clear that the petitioners should establish that there was no due consideration or fullest personal consideration or that there was a violation of principles of natural justice or that the action of the respondents was arbitrary, discriminatory, unfair or biased or that there was gross abuse of power, for enabling this Court to apply the doctrine to the benefit of the petitioners.

38. But a perusal of the records in this case shows that none of the above principles underlying the doctrine, has been violated. This is seen from the following sequence of events:-

(a) The petitioners submit an alternative proposal on 3.3.2006, to the Central Government, with a copy to the Competent Authority and Special District Revenue Officer (LA), National Highways Schemes, Kancheepuram.

(b) The Competent Authority in turn, forwards the proposal to the Project Director, National Highways Authority of India, by a letter dated 13.3.2006.

(c) The National Highways Authority of India, forwards the proposal to the Tamil Nadu Road Development Company Ltd., for an examination of the proposal, "with reference to the site conditions" and for submission of a report.

(d) The Tamil Nadu Road Development Company Ltd., which is actually a Company promoted by the Tamil Nadu Industrial Development Corporation Ltd., and Infrastructure Leasing and Financial Services Ltd., examines the proposal and issues a reply on 9.5.2006 to the National Highways Authority of India. The contents of the said reply are as follows:-

"The Land Owner's Alternate Proposal does not contain geometric details of loops and ramps. However, based on the available details and the provisions of relevant IRC Codes, the following brief comments are offered on the Alternate Proposal:

(a) No provision has been made for Right turn from Parrys to Padi.

(b) Incorporation of Parrys to Padi Right turn in the Alternate Proposal will entail provision of unacceptable high-grade. As per IRC 86-1983 Clause 11.2, a max. grade of 4% only is permissible.

(c) The horizontal geometric alignment of the Southeast Loop and free left from Parrys to Guindy do not satisfy the Codal provisions of IRC 86-1983. Clause 10.3 which require provision of super elevation of 4% for a design speed of 30 kmph.

(d) As per IRC 92-1985 Clause 15.2, the merging in/out length (acceleration and deceleration lengths) shall be 180 and 90 m respectively. The separation between the points of entry and exist from the Loops does not appear to be as per this provision.

The objective of constructing this Interchange at Koyambedu is to provide free flow facilities to Chennai City from NH-4. The Alternate Proposal does not fulfill the objective and is therefore not implementable."

(e) The National Highways Authority of India communicated the opinion of the Tamil Nadu Road Development Company Ltd., to the Competent Authority, by a letter dated 20.6.2006 and further pointed out that "the objective of construction of grade separator at Koyambedu Junction was to provide free flow of traffic on all the four directions and that the alternative proposal of the petitioners did not fulfill the objectives for which the grade separator has been proposed at the junction."

(f) In view of the opinion tendered by Tamil Nadu Road Development Company Ltd., and the National Highways Authority of India, the Central Government informed the petitioners, by the letter dated 1.11.2006 that the alternative proposal was found to be technically deficient and that therefore, it was not possible to change the layout plan of Koyambedu grade

separator at that stage.

(g) The petitioners sent another representation dated 20.11.2006 for reconsideration and the same was also rejected by an order dated 3.1.2007.

39. The above flow of events shows that there has been a due consideration of the alternative proposal. The proposal was examined by an independent expert body namely Tamil Nadu Road Development Company Ltd (promoted by the Tamil Nadu Industrial Development Corporation Ltd., and Infrastructure Leasing and Financial Services Ltd.). Therefore, the rejection of the alternative proposal also does not appear to be arbitrary or unfair or violative of the principles of natural justice. Hence, I am unable to accept the contention that there has been a violation of the doctrine of legitimate expectation.

40. Moreover, as held by the Supreme Court in Union of India vs. International Trading Co. And Another (2003 (5) SCC 437):

"The doctrines of promissory estoppel and legitimate expectation cannot come in the way of public interest, which has to prevail over private interest."

As a matter of fact, the Supreme Court cautioned that "for legal purposes, expectation is not the same as anticipation". Therefore, in my considered view, the petitioners have not made out a case for the invocation of the doctrine of legitimate expectation.

IV. MALA FIDES:

41. In the affidavits filed in support of the writ petitions, it is contended by the petitioners that a State Political Party was formed by one of the writ petitioners in September 2005 and that the popular support for the party was ever growing as seen from the fact that even by contesting the Assembly Elections independently without any alliance in May 2006, it secured 8.33% of votes polled in the State. It is stated in the affidavits that on account of the impact created by the Party, the rival Political Parties decided to throttle and crush the Party floated by the petitioners even at the threshold. Taking cue from those averments, the learned Senior Counsel for the petitioners contended that the invitation for an alternative proposal was made by the fourth respondent on 19.2.2006, the General Elections to the State Assembly were held in May 2006, the Elections to the Local Bodies were held in October 2006 and the rejection of the alternative proposal submitted by the petitioners was made on 1.11.2006. From this sequence of events, the learned Senior Counsel wanted to draw an inference that the rejection of the alternative proposal amounted to mala fide exercise of power in as much as there was a long gap of about eight months in considering the alternative proposal and communicating the decision thereon. It is only during this period of eight months from 3.3.2006 (date of submission of alternative proposal) to 1.11.2006 (date of rejection of the same) that the Assembly Elections were held in May 2006 and Local Body Elections were held in October 2006.

Therefore, the learned Senior Counsel for the petitioners contended that the reasons for rejection of the alternative proposal were obvious.

42. In support of his contention about the alleged mala fide exercise of power, the learned Senior Counsel for the petitioners relied upon the decisions of the Supreme Court in S.Partap Singh vs. State of Punjab (AIR 1964 SC 72) and C.S.Rowjee vs. State of Andhra Pradesh (AIR 1964 SC 962).

43. In Partap Singh's case, after holding that indirect motive or purpose or bad faith or personal ill-will is not to be held established except on clear proof thereof, the Supreme Court accepted that it is obviously difficult to establish the state of a man's mind. Therefore, the Supreme Court concluded in para-8 of the said judgment that bad faith can be inferred from proved facts, in the following words:-

"We must, however, demur to the suggestion that, mala fide in the sense of improper motive should be established only by direct evidence that is that it must be discernible from the order impugned or must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts."

44. After holding so in Partap Singh's case, the Supreme Court also added a word of caution in C.S.Rowjee's case, on the following lines:-

"It is true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of the cases which have come up before the Supreme Court and other Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not, some of it at least might stick. Consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact."

45. The above note of caution appears to have percolated down in all subsequent decisions of the Supreme Court. In E.P.Royappa vs. State of Tamil Nadu (1974 (4) SCC 3), the Supreme Court held that the burden of establishing mala fides is very heavy on the person who alleges it. In para-92 of the said decision, the Apex Court held that "the allegations of mala fides

are often more easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility."

46. Again in para-25 of its decision in State of Punjab vs. V.K. Khanna (2001 (2) SCC 330), the Apex Court held in no uncertain terms, as to what would constitute "mala fide" in the following words:-

"The expression "mala fide" has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bona fide - actions not otherwise bona fide, however, by themselves would not amount to be mala fide unless the same is in accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act."

47. In the backdrop of the law laid down by the Supreme Court on the issue relating to mala fides, if we examine the pleadings of the petitioners, the documents available on record and the circumstances surrounding the examination of the alternative proposal submitted by the petitioners, it is clear that there has been no mala fide exercise of power. If we again look into the sequence of events, at the risk of repetition, the project for construction of "grade separators" for "golden quadrilateral", was mooted in 2004 and the notification under Section 3-A(1) itself was issued on 12.8.2005, one month before one of the petitioners floated the Political Party on 14.9.2005. Even before the strength of the said Political Party could become known in terms of popular support, the declaration under Section 3-D(1) was issued on 18.11.2005. Therefore, the property actually vested with the Central Government, by virtue of Section 3-D(2), immediately after the publication of the declaration under Section 3-D(1). The Press statement attributed to the fourth respondent is dated 19.2.2006 and the alternative proposal was submitted on 3.3.2006. Thus it is clear that there is no and there cannot also be, any allegation of mala fides, upto the stage of publication of the declaration and the vesting of the property in the Central Government.

48. Coming to the events after the submission of the alternative proposal, it is seen from the scheme of the Act that there is no provision in the Act either for divesting or for reconveyancing, of a land which vests with the Central Government. While under the Land Acquisition Act, 1894, the Government is given liberty to withdraw from the acquisition, of any land, of which, possession has not been taken, under Section 48(1) of the Act and there is also a provision for reconveyance under Section 48-B of the Act, in so far as the State of Tamil Nadu is concerned (by virtue of Tamil Nadu Amendment Act 16 of 1997), there is no similar provision in the National Highways Act, 1956. In order to remove any doubt about the possible invocation of the provisions of the Land Acquisition Act, 1894, the National Highways Act,

1956, makes it clear under Section 3-J that "nothing in the Land Acquisition Act, 1894, shall apply to an acquisition under this Act".

49. In the light of the scheme of the National Highways Act, 1956, and the absence of any provision for divesting or reconveyancing, I am unable to see how far the respondents including the fourth respondent could have gone, in considering the alternative proposal submitted by the petitioners, after the land vested with the Central Government. Interestingly, there is not even a provision in the National Highways Act, 1956, akin to Section 11-A of the Land Acquisition Act, 1894, whereby the acquisition proceedings would lapse for the failure of the Collector to pass an Award within a prescribed period. The only provision in the National Highways Act, 1956, by which the proceedings shall lapse, is found in Section 3-D(3). It prescribes that if a declaration under Section 3-D(1) is not published within one year of a notification under Section 3-A (1), the notification shall cease to have effect.

50. In this case, the declaration under Section 3-D(1) was published on 18.11.2005, within one year the notification under Section 3-A(1) dated 12.8.2005 and hence the land vested in the Central Government after the publication under Section 3-D(1). Since the alternative proposal itself was made only on 3.3.2006 after the vesting took place, the acquisition proceedings could not even have been allowed to lapse, either by not passing an Award under Section 3-G or by not taking possession under Section 3-E.

51. If the allegation of mala fide exercise of power is tested in the context of the absence of any provision for divesting or reconveyancing or for allowing the proceedings to lapse, the conclusion is inevitable that the fourth respondent could have done nothing in favour of the petitioners. As a matter of fact, if the respondents had done anything in favour of the petitioners, by considering the alternative proposal favourably, the same might have come under attack from other land owners, as a mala fide exercise of power in favour of the petitioners. It is seen from the orders passed under Section 3-C(2) of the Act by the Competent Authority that even at that stage, many other land owners came up with alternative proposals for a "realignment of the grade separator" so as to avoid or minimise the impact of acquisition. All those proposals for realignment were rejected by the Competent Authority in his order under Section 3-C (2). Therefore, if the alternative proposal submitted by the petitioners after the declaration under Section 3-D(1) had been considered favourably, the other land owners would have come up with a challenge to the entire proceedings, on the same grounds on which the petitioners have now come, with the only difference that their case might be on a stronger footing in view of the absence of any provision in the Act for divesting or reconveyancing or for allowing the proceedings to lapse. Therefore, I am unable to countenance the challenge of the petitioners to the acquisition proceedings, as well as to the rejection of the alternative proposal, on the ground of mala fides.

V. PROPORTIONALITY:

52. Dr. Rajeev Dhavan, learned Senior Counsel for the petitioners contended that a time has come for the Courts to test administrative action, on the basis of the doctrine of proportionality, to find out if the Administrative Authorities could have adopted the least invasive or least restrictive choice of measures. Relying upon a passage from the book on "Administrative Law" by Sir William Wade, the learned Senior Counsel contended that "the Wednesbury doctrine is now in terminal decline, but the coup de grace has not yet fallen, despite calls for it from very high authorities". Contending that the Wednesbury test is moving closer to proportionality, the learned Senior Counsel drew my attention to paragraph-46 of the decision of the Supreme Court in Teri Oat Estates (P) Ltd vs. U.T. Chandigarh and Others (2004 (2) SCC 130), which reads as follows:-

"46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority

"maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve"."

53. The bone of contention of the learned Senior Counsel for the petitioners, on this aspect, is that if the respondents had applied the test of proportionality, the Kalyana Mandapam erected on the land sought to be acquired at a huge cost, could have been saved, especially since the petitioners were willing to give alternative land. Though the said contention of the learned Senior Counsel is appealing at first sight, I am unable to fall in love with the same, for the reason that the technical experts in the field viz., the Tamil Nadu Road Development Company Ltd and the National Highways Authority of India had examined the proposal and found it to be technically not feasible. They have also recorded the reasons for such a conclusion, in their communication to the Competent Authority. In the alternative plan shown to me by the learned Senior Counsel for the petitioners, it is seen that they have adopted a mirror image of the clover-leaf on the North East, to the South East. But such an adoption is stated to involve certain difficulties as per the Codal provisions of IRC 86-1983 and 92-1985. It appears that the alternative proposal submitted by the petitioners would also involve acquisition of the lands or the additional lands from other persons. Therefore, what could have been a least restrictive or least invasive choice of measures, for

the petitioners, would have actually become the most restrictive or invasive choice of measures for another person. Therefore, the Courts would do well to keep their hands off, when experts form an opinion. The restraint to be exercised in such cases, is aptly stated by Justice V.R.Krishna Iyer in Dr.Jagadish Saran and Others vs. Union of India (1980 (2) SCC 768), in the following words:-

"Judges should not rush in where specialists fear to tread. To doubt is not enough to demolish."

Therefore, in my considered view, even the doctrine of proportionality will not go to the rescue of the petitioners.

54. Relying upon the decision of the Supreme Court in Jnanedaya Yogam and Another vs. K.K.Pankajakshy and Others (1999 (9) SCC 492), the learned Senior Counsel for the petitioners contended that the Courts have favoured alternative lands for passages and roads, whenever the original proposal involved demolition of a superstructure. But I am afraid that the facts in the said case are on different footing. In the case before the Supreme Court, the land of the respondent was sought to be acquired for the purpose of providing passage to Pallivetta procession of Sree Jagannath Temple, Tellicherry. It involved the demolition of a shop belonging to the respondent and the respondent contended that a little diversion of the road may save her shop without in any way hindering the procession from reaching the destination. Since the enquiry under Section 5-A had been dispensed with in the said case, the Supreme Court considered the alternative proposal and found it to be fair. The only objection of the appellant, to the alternative proposal was that the original proposal was considered to be a sanctified route as per the advice of Astrologers. Therefore, the Supreme Court concluded that the acquisition cannot be on the basis of sentimental approach of the authorities and that no valid acquisition under the Act can be based on Astrologers' satisfaction only. But in the present case, the alternative proposal submitted by the petitioners, was considered by an expert body, which has also furnished technical reasons for rejecting the same. Therefore, the same cannot be placed on par with the satisfaction that the Authorities reached in the case before the Supreme Court.

55. In fine, I am unable to sustain any of the grounds on which the petitioners have assailed the acquisition proceedings as well as the rejection of their alternative proposal. Consequently, both the writ petitions are dismissed. No costs. Connected miscellaneous petitions are also dismissed.

Svn

Sd/
Asst.Registrar

/true copy/

To

- 1.The Secretary,
Union of India,
Ministry of Shipping, Road Transport
and Highways, Department of Road
Transport and Highways, New Delhi.
 - 2.The Competent Authority and
Special District Revenue Officer (L.A.),
National Highway Schemes,
Kancheepuram and Tiruvallur Districts,
R.D.O. Office, Kancheepuram.
 - 3.The Project Director,
National Highways Authority of India,
SPIC House, No.88, Anna Salai,
Guindy, Chennai-600 032.
 - 4.The Central Public Information Officer,
National Highways Authority of India,
Central Information Commission,
Old JNU Campus, Block-IV,
5th Floor, New Delhi-110 067.
- + 1 cc to Mr. S. Manimaran, Advocate SR No. 9243
- + 1 cc to Mr. P. Wilson, Asst. Solicitor General SR/9262

VC(CO)
SR/16.2.2007

Common Order
in
WPs 1482 and
1869/2007

सत्यमेव जयते

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